COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 163 of 2004

Ms/ Reading & Bates Exploration Co.
as Agent of Mr. Michael Schmidt

.....Appellant

Versus

The Commissioner of Income Tax, Dehradun

..... Respondent

Ms. Krishi Shukla, Advocate for the appellant.
Mr. S.K. Posti, Advocate for the respondents.

Dated: December 6, 2005

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

Both the parties are ready to argue the matter today.

2. This appeal has been preferred against the consolidated order dated 09.07.2004 for the assessment year 1998-99, passed by the Income Tax Appellate Tribunal, (Bench 'B' New Delhi).

3. Brief facts of the case-giving rise to this appeal are that the appellant during the year under consideration employed foreign technicians for carrying on the work off shore oil drilling. As per terms of employment and nature of operation carried on by these persons, they were entitled to spend 28 days out of India after rendering services in India. On the basis of this, it was the claim of the assessee that the salary for 28 days off period, which they were entitled to stay out of India was not liable to be taxed in India. The Assessing Authority worked out

value of perquisites at the rate of Rs.270/- to Rs.290/- per day and added the same to the income. The A.O. also levied interest under Sec.234-B of the Income-Tax Act, as the assessees did not pay advance tax in terms of Sec. 208 of the Income Tax Act. On appeal, the Commissioner of Income Tax (Appeals), Dehradun affirmed the order of the Assessing Authority. In the second appeal, the Income Tax Appellate Tribunal partly allowed the appeal.

4. The learned counsel for the parties agree that only the following question of law arises in the appeal for the determination and they do not press the rest of the questions framed in the appeal: -

Whether the Tribunal was right in holding that off-period salary was not taxable under Section 9(1)(ii) read with the Explanation as it stood at the relevant time?

5. This question was answered by the Division Bench of this Court in the favour of the Revenue Department in the case of Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. reported in (2003) 264 ITR 320. The Special Leave Petition was filed against the judgment by the Sedco Forex International Drilling Co. Ltd., which was converted into Civil Appeal Nos.351-355 of 2005. The Hon'ble Apex Court in **"Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) Sc 639"** has held that since the Explanation to Section 9(1)(ii) of the Income Tax Act, 1961 was amended by the Finance Act 1999 and was prospective, therefore, it could not be made applicable in the previous years i.e. to say that no retrospective effect can be given to the Explanation, if the assessment proceedings are pending after the said amendment and

accordingly the judgment of Division Bench of this Court was set aside as the assessment year in dispute was prior to 1999.

6. In the present case also, the assessment year is prior to 1999, thus the assessee cannot be taxed in view of the law laid down by the Hon'ble Apex Court **"Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another (Supra).**

7. Accordingly, the appeal is allowed. The question is answered accordingly. No order as to costs.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang